

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROBERT WILLIAM WHITE,
Petitioner.

No. 2 CA-CR 2013-0360-PR
Filed January 14, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20053547

The Honorable Jeffrey T. Bergin, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Lori J. Lefferts, Pima County Public Defender
By Rebecca A. McLean, Assistant Public Defender, Tucson
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

M I L L E R, Judge:

¶1 Petitioner Robert White seeks review of the trial court’s order summarily dismissing his successive notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 After a jury trial, White was convicted of illegally conducting an enterprise, conspiracy to possess a dangerous drug for sale, and three counts of possession of a dangerous drug for sale. The trial court sentenced him to concurrent, presumptive prison terms, the longest of which are life terms without the possibility of parole for twenty-five years. We affirmed White’s convictions and sentences on appeal. *State v. White*, No. 2 CA-CR 2007-0108 (memorandum decision filed Sept. 3, 2008). White then sought post-conviction relief asserting a claim of ineffective assistance of trial counsel, which the court denied, and this court denied relief on review. *State v. White*, No. 2 CA-CR 2010-0049-PR (memorandum decision filed June 3, 2010). We also denied relief on review of the court’s denial of White’s request to file a successive petition for post-conviction relief in order to assert claims of ineffective assistance of trial, appellate, and Rule 32 counsel. *State v. White*, No. 2 CA-CR 2010-0403-PR (memorandum decision filed May 6, 2011).

¶3 In his most recent notice of post-conviction relief, filed in propria persona, White maintained he had failed, through no fault of his own, to timely file his second post-conviction petition “which is cognizable under” *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012). See Ariz. R. Crim. P. 32.1(f). He thus asserted counsel

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should be appointed to “argue change in law and ineffective assistance of post-conviction counsel in failing to argue ineffective assistance of that counsel in an effective manner,” and also checked the box on the form notice indicating he was actually innocent. *See* Ariz. R. Crim. P. 32.1(g), (h).

¶4 The trial court dismissed White’s notice of post-conviction relief, concluding, in summary, his claims of ineffective assistance of counsel were untimely and precluded pursuant to Rules 32.2(a) and 32.4(a); White did not establish a claim under Rule 32.1(f), nor was he entitled to relief under *Martinez* because “the issue of ineffective assistance of trial counsel has been fully and thoroughly addressed by this Court in the initial Rule 32 proceeding, which was reviewed and affirmed by the Court of Appeals”; and, White’s notice was subject to summary dismissal because he had not set forth the substance of his claims under Rule 32.1(g) or (h). *See* Ariz. R. Crim. P. 32.2(b) (requiring summary dismissal of untimely or successive notice of post-conviction relief that fails to include “specific exception [to preclusion] and meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner”).

¶5 On review, White¹ cites *Martinez* to argue that “[a] claim made pursuant to *State v. Donald* and *Lafler v. Cooper*² is a substantial claim of ineffective assistance which . . . should excuse procedural default,” and alternatively argues *Martinez* is a significant change in the law, excepting his claim from preclusion. Therefore, White contends, the trial court abused its discretion in dismissing his notice³, and asks that we “order the appointment of counsel and further briefing and evidentiary hearing on the issues of new law,

¹White is represented by the Office of the Pima County Public Defender on review.

²*State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000); *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012).

³Contrary to counsel’s representation that White filed a successive “petition,” he filed a notice of post-conviction relief.

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procedural default, and inquiry as to why trial counsel did not provide correct information regarding a proffered plea offer.” And, he asserts that he would have accepted such a plea offer, thereby “serving substantially less time than the life sentence he has been given.”

¶6 The trial court correctly resolved the claims identified in White’s notice in a manner that will allow this court and any court in the future to understand their resolution. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We therefore approve and adopt the court’s ruling and see no need to restate it here. *See id.* We note, moreover, this court has determined that the Court’s decision in *Martinez* is not a significant change in the law for purposes of Rule 32.1(g). *See State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 3, 6, 307 P.3d 1013, 1014 (App. 2013).

¶7 For these reasons, we grant the petition for review, but deny relief.